Yii Ming Tung v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO Q-05–37–2011 OF 2013
ZAHARAH IBRAHIM, ABDUL AZIZ AB RAHIM AND VARGHESE GEORGE JJCA
19 JUNE 2014

Criminal Procedure — Appeal — Appeal against conviction and sentence — Accused person convicted for murder — Penal Code s 302 — Accused person sentenced to life imprisonment with six strokes of rotan — Whether autopsy report admitted under s 399 of the Criminal Procedure Code ('Code') admissible — Whether doctor who gave medical report was not medical doctor authorised under s 34C of the Medical Act 1971 — Definition of 'government medical officer' or 'medical officer' under s 2 of the Code

While the deceased and his friends were drinking, the appellant approached the deceased and attacked him with a sharp object. Five days later the deceased passed away due to complication of the penetrating injury to the abdomen. The appellant was subsequently charged in the High Court for the offence of murder under s 302 of the Penal Code. The appellant's defence was that he was already drunk having consumed five to six bottles at the time the appellant appeared and stabbed the deceased. PW2, PW3 and PW4 were all able to positively identify the appellant in the dock as the assailant as they used to see the appellant around before the incident. They had also identified the appellant in the ID parade held by the police. The appellant was convicted by the trial judge and sentenced to life imprisonment with six strokes of whipping. The appellant was convicted and sentenced to death by hanging after a full trial. The main issue raised by the appellant in this appeal was that the autopsy report (exh P7) by Dr Savior Selva Suresh MD, a forensic specialist at Sibu General Hospital, admitted under s 399 of Criminal Procedure Code ('the CPC') was inadmissible because Dr Suresh was not a medical doctor authorised under s 34C of the Medical Act 1971 ('Act'). Dr Suresh, who conducted the postmortem on the deceased, was not called by the prosecution to testify as to his autopsy report at the trial. As such it was argued and submitted that there was no medical evidence as to the injuries suffered by or inflicted on the deceased that allegedly caused his death. The prosecution argued that exh P7 was admissible because the prosecution had complied with the requirement of s 399(1) of the CPC. Exhibit P7 was served on the appellant two months before the trial and the appellant had acknowledged receipt. It was also submitted that the appellant was informed of his right to call the doctor who prepared the autopsy report to testify in court by giving the prosecution a three days notice. There was no such notice given to the prosecution by the appellant.

Held, dismissing the appeal:

(1) Being attached to the Sibu General Hospital which is a government hospital, Dr Suresh was no doubt a government medical officer unless there is evidence to show otherwise; and there was no such evidence produced by the appellant. The answer to the appellant's complaint lies in the construction of the definition of the term 'government medical officer' or 'medical officer' in s 2 of the CPC. The definition of 'government medical officer' or 'medical officer' in s 2 of the CPC has an extended meaning to include a private medical practitioner who is not a government medical officer or a medical officer who has been authorised in writing under s 34C of the Act to perform the functions specified under the section (see paras 19, 20 & 26).

(2) The usage of the word 'includes' in the definition was to extend the meaning of the term 'government medical officer' to embrace any other medical officer who was not a member of the medical service in the public service of Malaysia or in the employment of the Government of Malaysia and deemed to be a government medical officer or a medical officer for the purpose of s 399(2) of the CPC if such medical officer was authorised in writing by the Director General of Health pursuant to s 34C of the Act. A fully registered medical practitioner who was a private practitioner may be authorised by the Director General of Health of Malaysia under the said section of the Act for the purpose of the CPC (see para 22).

(3) There was no merit in the argument by the appellant that Dr Suresh was not a medical officer within the meaning of s 2 of the CPC. There was no question about Dr Suresh being, at the material time, a registered medical practitioner in the employment of the Government of Malaysia and was a member of the medical service of the public service of Malaysia and served in the capacity of forensic specialist attached to the government hospital at Sibu General Hospital. Being a government medical officer, Dr Suresh did not require any written authorisation by the Director General of Health of Malaysia to perform the autopsy or the postmortem on the deceased (see para 27).

[Bahasa Malaysia summary

Semasa si mati dan kawan-kawannya sedang minum, perayu menuju ke arah si mati dan menyerangnya dengan objek tajam. Lima hari kemudian si mati meninggal dunia akibat komplikasi kecederaan akibat tikaman di bahagian abdomen. Perayu kemudian telah dituduh di Mahkamah Tinggi kerana kesalahan membunuh di bawah s 302 Kanun Keseksaan. Pembelaan perayu adalah bahawa dia telahpun mabuk selepas minum lima hingga enam botol pada masa perayu datang dan menikam si mati. PW2, PW3 dan PW4 kesemuanya boleh mengecam dengan positif perayu di kandang saksi sebagai penyerang kerana mereka sering melihat perayu di situ sebelum kejadian.

Mereka juga telah mengecam perayu dalam barisan pengecaman yang dilakukan oleh polis. Perayu telah disabitkan oleh hakim perbicaraan dan dihukum penjara seumur hidup dan enam kali sebatan. Perayu telah disabitkan dan dijatuhkan hukuman mati gantung selepas perbicaraan penuh. Isu utama yang ditimbulkan oleh perayu dalam rayuan ini adalah bahawa laporan autopsi (eksh P7) oleh Dr Savior Suresh MD, pakar forensik di Hospital Besar Sibu, yang diterima masuk di bawah s 399 Kanun Tatacara Jenayah ('KTJ') tidak boleh diterima kerana Dr Suresh bukan doktor perubatan yang diberi kuasa di bawah s 34C Akta Perubatan 1971 ('Akta'). Dr Suresh, yang melakukan postmortem ke atas si mati, tidak dipanggil oleh pendakwaan untuk memberi keterangan berhubung laporan autopsinya semasa perbicaraan. Oleh itu ia dihujahkan dan dikemukakan bahawa tiada keterangan perubatan tentang kecederaan yang dialami oleh atau dilakukan kepada si mati yang dikatakan telah menyebabkan kematiannya. Pendakwaan berhujah bahawa eksh P7 boleh diterima kerana pendakwaan telah mematuhi keperluan s 399(1) KTJ. Ekshibit P7 telah disamapaikan ke atas perayu dua bulan sebelum perbicaraan dan perayu telah mengaku penerimaan. Ia juga dihujahkan bahawa perayu diberitahu tentang haknya untuk memanggil doktor yang menyediakan laporan autopsi untuk memberi keterangan di mahkamah dengan memberi notis tiga hari kepada pendakwaan Tidak ada notis sebegitu yang diberikan kepada pendakwaan oleh perayu.

Diputuskan, menolak rayuan:

(1) Bertugas di Hospital Besar Sibu yang merupakan hospital kerajaan, tidak diragui bahawa Dr Suresh ialah pegawai perubatan kerajaan kecuali jika terdapat keterangan untuk menunjukkan sebaiknya; dan tiada keterangan sedemikian yang dikemukakan oleh perayu. Jawapan kepada aduan perayu terletak kepada pembinaan definisi istilah 'government medical officer' atau medical officer' dalam s 2 KTJ. Definisi 'government medical officer' atau 'medical officer' dalam s 2 KTJ mempunyai maksud lebih lanjut yang termasuk pengamal perubatan swasta yang bukan pegawai perubatan kerajaan atau pegawai perubatan yang telah diberi kuasa secara bertulis di bawah s 34 Akta untuk melaksanakan fungsi-fungsi yang ditetapkan di bawah seksyen tersebut (lihat pereggan 19, 20 & 26).

(2) Penggunaan perkataan 'includes' dalam definisi adalah untuk meuaskan maksud istilah 'government medical officer' bagi meliputi mana-mana pegawai perubatan lain yang bukan ahli kepada perkhidmatan perubatan dalam perkhidmatan awam Malaysia atau dalam pekerjaan Kerajaan Malaysia dan dianggap sebagai pegawai perubatan kerajaan atau pegawai perubatan bagi tujuan s 399(2) KTJ jika pegawai perubatan tersebut diberi kuasa secara bertulis oleh Ketua Pengarah Kesihatan menurut s 34C Akta Perubatan 1971. Pengamal perubatan yang berdaftar sepenuhnya yang merupakan pengamal swasta boleh diberi kuasa oleh

Ketua Pengarah Kesihatan Malaysia di bawah seksyen tersebut Akta bagi tujuan KTJ (lihat perenggan 22).

(3) Tiada merit dalam hujah oleh perayu bahawa Dr Suresh bukan pegawai perubatan dalam maksud s 2 KTJ. Tiada persoalan tentang Dr Suresh yang merupakan, pada masa matan, seorang pengamal perubatan berdaftar dalam pekerjaan Kerajaan Malaysia dan adalah ahli perkhidmatan perubatan dalam perkhidmatan awam Malaysia dan berkhidmat dalam kapasiti pakar forensik yang telah ditugaskan ke hospital kerajaan di Hospital Kerajaan Sibu. Sebagai pegawai perubatan kerajaan, Dr Suresh tidak memerlukan pemberian kuasa bertulis oleh Ketua Pengarah Kesihatan Malaysia untuk melaksanakan autopsi atau postmortem ke atas si mati (lihat perenggan 27).]

Notes

For cases on appeal against conviction and sentence, see 5(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 288–371.

Cases referred to

Lee Boon Siah & Ors v PP and other appeals [2014] 2 MLJ 652, CA (refd)
PP v Hun Peng Khai & Ors [1984] 2 MLJ 318 (refd)
PP v Subramaniam [1969] 1 MLJ 145 (refd)
PP v Hun Peng Khai & Ors [1984] 2 MLJ 318 (refd)
PP v Ismail bin Ali [2008] MLJU 356; [2009] 8 CLJ 46, HC (refd)
PPv Lam Peng Hoa & Anor [1996] 5 MLJ 405; [1993] 3 CLJ 749, HC (refd)
PP v Lin Lian Chen [1991] 1 MLJ 316; [1990] 2 CLJ (Rep) 746, HC (refd)
PP v Ramasami a/l Simmathri & Ors and Another Application [2001] 4 MLJ 412; [2001] 4 CLJ 690, HC (refd)
Tenaga Nasional Bhd v Tekali Prospecting Sdn Bhd [2002] 2 MLJ 707, CA (refd)
Winnie Yek Leh Cheng v PP (Rayuan Jenayah No Q-05–261 of 2010)(unreported) (refd)

Legislation referred to

Criminal Procedure Code ss 2, 399, 399(1), (2), (2)(a), (2)(b)
Electricity Supply Act 1990 s 2
Medical Act 1971 ss 2, 34C
Penal Code s 302

Appeal from: Criminal Trial No 45–5 of 2010 (High Court, Sibu)

Joseph Tang (Tang & Co) for the appellant.
Nahra bt Dollah (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Abdul Aziz Ab Rahim JCA (delivering judgment of the court):

[1] The appellant, Yii Ming Tung was charged for murder under s 302 of the Penal Code which reads:

> Bahawa kamu pada 8.5.2009 jam lebih kurang 9.30 malam, bertempat di sebelah Bank Standard Chartered, Jalan Tukang Besi, dalam Daerah Sibu, dalam Negeri Sarawak, telah membunuh Alexander Anak Ganok (730509-13-5093), dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

The appellant was convicted and sentenced to death by hanging after a full trial. This is his appeal.

THE MATERIAL FACTS

[2] On 8 May 2009 at about 9pm a group of friends comprising Mansorah bin Su'ud (PW2), Rajis ak Akau (PW3) and Regina ak Francis (PW4) and the deceased Alexander ak Ganok gathered at the five-foot way in front of a shop near to the Standard Chartered Bank at Jalan Blacksmith, Sibu for a drinking session.

[3] While they were there drinking, the appellant approached the deceased and attacked him with a sharp object. He also attacked and injured PW2 who tried to protect the deceased. Five days later the deceased passed away due to complication of the penetrating injury to the abdomen. The appellant was subsequently charged in court for the offence of murder under s 302 of the Penal Code.

[4] The prosecution relied on the testimonies of PW2, PW3 and PW4 who were the eyewitnesses to the incident. Their testimonies show that they were having drinks at the five-foot way. PW2 was leaning against the wall about three meters away from PW3 and PW4. PW3 was about 2 1/2 meters from the deceased and PW4 was sitting just next to the deceased at an arm's length distance.

[5] PW2 said that while they were having drinks, the appellant came and stabbed the deceased on the back with a sharp object which he estimated to be about 5 1/2 inches long with the width the size of his thumb ie 1.5cm, without saying a word. But he could not see clearly what the sharp object was as it was dark. He said he was already drunk (having consumed five to six bottles) at the time the appellant appeared and stabbed the deceased. Nevertheless, he tried to

stop the appellant from attacking the deceased and the appellant also attacked and hurt him. PW2 fled and was subsequently admitted to the Sibu Hospital for treatment.

[6] In cross-examination PW2 said the appellant stabbed the deceased only once at the back and at the waist. PW2 said he was not really drunk at the time.

[7] PW3 testified that he was drunk at the time of the incident but still alert to the happening around him. He saw the appellant coming towards where they were drinking and there was at first a fight between the deceased and the appellant. Thereafter the appellant stabbed the deceased's back first and then the chest. He did not see the weapon used by the appellant as he was some distance from the deceased.

[8] He confirmed that after stabbing the deceased, the appellant also stabbed PW2, who then fled from the scene. He and PW4 also ran away from the scene.

[9] PW4 testified that the appellant suddenly appeared at the scene and she heard him said '*I want to stab Alexander for revenge*' prior to stabbing the deceased on the back, chest and waist with a knife.

[10] In cross-examination PW4 said the appellant stabbed the deceased at the waist first followed by the chest and then at the back. According to PW4, they had consumed one bottle of liquor before the incident and they were not really drunk. PW3 admitted that with only street light lighting the five-foot way, she could not see things very clearly.

[11] PW2, PW3 and PW4 were all able to positively identify the appellant in the dock as the assailant as they used to see the appellant around before the incident. They had also identified the appellant in the ID parade held by the police.

[12] The autopsy report (exh P7), admitted pursuant to s 399 of the Criminal Procedure Code ('the CPC'), stated the findings of the autopsy performed on the deceased by one Dr Savior Selva Suresh, forensic specialist at the Sibu Hospital, on 14 May 2009. It reveals, amongst others, the following injuries:

(a) 14cm long linear midline surgical incision wound with 18 metal staples over the abdomen above the umbilicus level;

(b) 1.4cm long suture wound with one suture seen over the front of right chest — 8cm below the right nipple and 6cm from the midline;

(c) 2.4cm long sutured wound with three sutured seen over the front of right lower chest — 5.5cm from the midline and 8cm blow the injury No 2;

(d) 1 x 0.cm x cavity deep surgical incised wound over the supra pubic region (catheterisation for bladder drainage); and

(e) 1.5 x 0.5 x 4cm stab wound over the midline of the back — 19cm above the gluteal groove.

[13] In this appeal and before us, the appellant did not challenge the finding of facts by the learned judge:

(a) that the deceased, Alexander ak Ganok, died as a result of injuries sustained by him;

(b) that the injuries suffered by the deceased were caused by or the result of the attack on the deceased by the appellant; and

(c) that in inflicting the injuries on the deceased, the appellant had the intention of causing death; or the intention of causing such bodily injuries as the appellant knew to be likely to cause the death; or the intention of causing bodily injuries and such bodily injuries intended and inflicted were sufficient in the ordinary course of nature to cause death, and had committed the acts that were imminently dangerous that they must in all probability cause death or such bodily injuries are likely to cause death.

THE ISSUE AND THE APPELLANT'S SUBMISSION

[14] The main issue raised by the appellant in this appeal is that the autopsy report (exh P7) by Dr Savior Selva Suresh MD a forensic specialist at Sibu General Hospital, Sibu Sarawak admitted under s 399 of the CPC is inadmissible because, it was submitted for the appellant, Dr Suresh is not a medical doctor authorised under s 34C of the Medical Act 1971 ('Act 50'). Dr Suresh, who conducted the postmortem on the deceased, was not called by the prosecution to testify as to his autopsy report at the trial. As such it was argued and submitted that there is no medical evidence as to the injuries suffered by or inflicted on the deceased that allegedly caused his death.

[15] Learned counsel for the appellant submitted that there is no evidence to show that Dr Suresh had authorisation in writing by the Director General of Health of Malaysia under s 34C of the Medical Act 1971 to perform functions specified in that section — one of which is to perform postmortem on the dead to establish the cause of death. Therefore it was argued that Dr Suresh was not a medical officer within the meaning of s 399(2)(b) as defined in s 2 of the CPC.

[16] For the purpose of this appeal the relevant provisions of s 2 and s 399(2) of the CPC and s 34C of the Medical Act 1971 are reproduced below—

Section 2 of CPC

'Government Medical Officer' or 'Medical Officer' includes a medical practitioner who has been given by the Director General of Health Malaysia, an authorisation in writing under section 34C of the Medical Act 1971 (Act 50) to perform functions specified in that section

And

Section 399 of CPC

(1) Any document purporting to be a report under the hand of any of the persons mentioned in subsection (2) upon any person, matter or thing examined or analysed by him or any document purporting to be a report under the hand of the Registrar of Criminals upon any matter or thing relating to finger impressions submitted to him for report may be given in evidence in any inquiry, trial or other proceeding under this Code unless that person or Registrar shall be required to attend as a witness —

(a) ...

(b) ...

(2) The following are persons to whom the provisions of this section apply:

(a) Government Medical Officer;

(b) Chemists in the employment of any Government in Malaysia or of the Government of Singapore.

And

Section 34C of Medical Act 1971

34C(1) The Director General may authorise in writing any medical practitioner who is registered under section 14 and not being a medical practitioner in the public service to undertake any of the following functions, that is:

(a) Investigation, examination, treatment or management of any patient; or

(b) Perform an autopsy or postmortem investigation of any deceased person.

in any healthcare facility and services

(1A) The Director General may delegate his power under subsection

(1) to any State Health Director or any equivalent officer.

(2) A medical practitioner who is authorised under subsection (1) or (1A) to perform any of the functions referred to in paragraphs (1)(a) and (b) shall be deemed to be a Government Medical Officer for the purposes of the Criminal Procedure Code (Act 593) and any other relevant laws in Malaysia.

[17] To support his argument learned counsel for the appellant cited to us an unreported Court of Appeal case of *Winnie Yek Leh Cheng v Public*

Prosecutor (Rayuan Jenayah No Q-05–261 of 2010) where the prosecution sought to admit into evidence the autopsy report by the same witness Dr Suresh on the deceased in that case under s 399(1) of the CPC without calling the doctor to come and testify at the trial. It was impressed upon us that in that case the Court of Appeal ruled that the autopsy report was not admissible under s 399(1) of the CPC because Dr Suresh was not a government medical officer under that s 399(2)(a); accordingly the conviction in that case was set aside and the appeal was allowed. Our comment on this submission by the learned counsel for the appellant is that we are unable to express any views on that case because no written grounds of judgment was made available to us and the case was not reported. We were only shown the sealed copy of the order of the Court of Appeal in that case. We have to take learned counsel's word for it.

THE RESPONDENT'S SUBMISSION

[18] The learned deputy prosecutor submitted that the autopsy report (exh P7) is admissible. The prosecution had complied with the requirement of s 399(1) of the CPC. The autopsy report exh P7 was served on the appellant two months before the trial and the appellant had acknowledged receipt as evident in exh P4. It was also submitted that the appellant was informed of his right to call the doctor who prepared the autopsy report to testify in court by giving the prosecution a three days notice. There was no such notice given to the prosecution by the appellant. The learned deputy public prosecutor cited a string of authorities — *Public Prosecutor v Lin Lian Chen* [1991] 1 MLJ 316; [1990] 2 CLJ (Rep) 746, *Public Prosecutor v Ramasami a/l Simmathri & Ors and Another Application* [2001] 4 MLJ 412; [2001] 4 CLJ 690, *Public Prosecutor v Ismail bin Ali* [2008] MLJU 356; [2009] 8 CLJ 46, *Public Prosecutor v Lam Peng Hoa & Anor* [1996] 5 MLJ 405; [1993] 3 CLJ 749 and *Public Prosecutor v Subramaniam* [1969] 1 MLJ 145 — to persuade and convince us that the autopsy report exh P7 is admissible as evidence in law and urged upon us to re-visit this court's decision in *Winnie Yek Leh Cheng*.

OUR OPINIONS

[19] We will begin by observing that the appellant did not dispute the fact that Dr Suresh is a qualified medical doctor and was at the material times the forensic specialist at Sibu General Hospital, Sibu, Sarawak. Being attached to the Sibu General Hospital which is a government hospital, Dr Suresh was no doubt a government medical officer unless there is evidence to show otherwise; and there was no such evidence produced by the appellant. The one and only complaint by the appellant is that Dr Suresh was never authorised under s 34C of the Medical Act 1971 by the Director General of Health of Malaysia to perform any of the functions under that section; and one of the functions is to perform autopsy or postmortem investigation of any deceased person. Therefore, according to the appellant, Dr Suresh is not a government medical

officer within the meaning of s 399(2) of the CPC read together with s 2 of the CPC which defines 'government medical officer' or 'medical officer' for the purpose of the CPC.

[20] In our view the answer to the appellant's complaint lies in the construction of the definition of the term 'government medical officer' or 'medical officer' in s 2 of the CPC.

[21] We note that the definitive section reads *'government medical officer' or 'medical officer' includes a medical practitioner … '*. In our opinion the expression 'medical practitioner' in the definition would naturally refer to the 'provisionally registered medical practitioner' or 'fully registered medical 'practitioner' as defined in s 2 of the Medical Act 1971 since it is the only Act that registers all medical practitioners in this country who wish to practice medicine.

[22] The emphasis is on the word 'includes' in the definition of the terms 'government medical officer' or 'medical officer' in s 2 of the CPC. In our view the choice of the word 'includes' instead of the word 'means' by the draftsman or the legislature in the above definition is deliberate. It is to show that the reference to 'government medical officer' or 'medical officer' under the relevant section is not confined to a medical officer, either provisionally registered or fully registered, who is employed by the Government of Malaysia and appointed to a medical service in the public service of Malaysia. The usage of the word 'includes' in the definition is to extend the meaning of the term 'government medical officer' to embrace any other medical officer who is not a member of the medical service in the public service of Malaysia or in the employment of the Government of Malaysia and deemed to be a government medical officer or a medical officer for the purpose of s 399(2) of the CPC if such medical officer is authorised in writing by the Director General of Health pursuant to s 34C of the Medical Act 1971. What this means is that, a fully registered medical practitioner who is a private practitioner may be authorised by the Director General of Health of Malaysia under the said section of the Medical Act 1971 for the purpose of the CPC.

[23] The meaning of the word 'includes' to indicate extension instead of limitation was discussed in *Public Prosecutor v Hun Peng Khai & Ors* [1984] 2 MLJ 318, which was referred to by the Court of Appeal in *Lee Boon Siah & Ors v Public Prosecutor and other appeals* [2014] 2 MLJ 652. In *Tenaga Nasional Berhad v Tekali Prospecting Sdn Bhd* [2002] 2 MLJ 707, another Court of Appeal case, the court speaking through the judgment of Gopal Sri Ram JCA (as he then was) in discussing the scope of the definition of the word 'equipment' in s 2 of the Electricity Supply Act 1990 which reads:

> 'equipment' includes any item for such purposes as generation, conversion, transmission, distribution or utilisation of electrical energy, such as machines transformers, apparatus, measuring instruments, protective devices, wiring materials, accessories and appliances ...

had this to say with regards to the word 'includes' in the definition:

> Particular emphasis is to be placed upon the word 'includes' in this definition. On settled principles of statutory interpretation, it is clear that when an Act of Parliament employs the expression 'includes' to define some other word or expression, the intention is to leave the meaning of the expression defined open ended.

[24] The two cases cited above support the view that the usage of the word 'includes' in the drafting of the definition 'government medical officer' or 'medical officer' in s 2 of the CPC shows that the definition is non exhaustive as compared to the usage of the word 'means' which indicates an exhaustive definition.

[25] Textbook writers on legislative drafting and interpretation of statutes also support the view that the usage of the word 'includes' in drafting a provision of a legislation indicates an extended meaning of the terms or things that the provisions were meant to describe. GC Thornton in his authoritative book 'Legislative Drafting' (4th Ed) said at p 146 on the usage of the word 'includes' as a drafting tool to extend a particular definition or meaning of a term in the statute as follows:

> An extending definition stipulates for the defined term a meaning that in some respect goes beyond the meaning or meanings conveyed in common usage by the term. Such a definition usually adds to the conventional meaning an element of assigned meaning.

[26] The authors of 'N S Bindra's Interpretation of Statutes' (9th Ed) (Publisher: LexisNexis Butterworths) have these to comments on the usage of the word 'includes' in the drafting of a provision of a statute:

> 'The word 'includes' has an extending force, and does not limit the meaning of the term to the substance of the definition. However, it is not an inflexible rule that the word 'include' should be read always as a word of extension without reference to the context'. (pp 1523-1524)
>
> ...
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> ...
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> 'It is a well-known rule of interpretation that the word 'include' is used as a word of enlargement and ordinarily implies that something else has been given beyond the general language which proceeds it. To add to the general clause a species which does not naturally belong to it'. (p 1524)
>
> ...

A ...

'The word 'includes' is a word of enlargement rather than of restriction, but cannot be taken to be exhaustive when used in a definition clause.

When it is mentioned that a particular definition 'includes' certain things it should be taken that the legislature intended to settle a difference of opinion on the point or wanted to bring in other matters that would not properly come within the ordinary connotation of the word or expression or phrase in question.

The word 'include' in the statutory definition is generally used to enlarge the meaning of the preceding words or phrase occurring in the body of the statute, and when it is not used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include'.

Therefore, it is our considered view that the definition of 'government medical officer' or 'medical officer' in s 2 of the CPC has an extended meaning to include a private medical practitioner who is not a government medical officer or a medical officer who has been authorised in writing under s 34C of the Medical Act 1971 to perform the functions specified under the section.

[27] Accordingly, we find no merit in the argument by learned counsel for the appellant that Dr Suresh is not a medical officer within the meaning of s 2 of the CPC. We observe that there is no question about Dr Suresh being, at the material time, a registered medical practitioner in the employment of the Government of Malaysia and is a member of the medical service of the public service of Malaysia and served in the capacity of forensic specialist attached to the government hospital at Sibu General Hospital, Sarawak. Being a government medical officer, Dr Suresh did not require any written authorisation by the Director General of Health of Malaysia to perform the autopsy or the postmortem on the deceased. In our view, a government medical doctor is deemed to have such authorisation or that the authorisation can be implied by virtue of their appointment in the medical service of the public service of Malaysia. The written authorisation by the Director General of Health under s 34C of the Medical Act 1971 to perform autopsy or postmortem on a deceased person is only required by a registered medical practitioner other than those in the employment of the Government of Malaysia and a member of the medical service of the public service of Malaysia.

[28] On the foregoing arguments we hold Dr Suresh is a government medical officer and that the autopsy or postmortem report (exh P7) prepared by him in this case was properly admitted in evidence.

[29] Besides the issue of Dr Suresh not being authorised under s 34C of the Medical Act 1971, the appellant also raised other grounds in his petition of appeal. However, in the course of submission and arguments before us, learned counsel for the appellant did not pursue these grounds. He was contented only

to rely on the principal issue discussed above relating to the authorisation under s 34C of the Medical Act 1971. We therefore deem it that the appellant has abandoned all these other grounds.

[30] That being the case, and in view of what we have said above on the principal issue, we find no merits in this appeal and we accordingly dismiss it. We affirm the conviction and sentence imposed by the High Court on the appellant.

Appeal dismissed.

Reported by Afiq Mohamad Noor